

MINUTES
Northampton County Planning Commission
October 16, 2013

This was a work session of the Northampton County Planning Commission held on Wednesday, October 16, 2013, in the main conference room at the County Administration Building located at 16404 Courthouse Road in Eastville, Va.

In attendance were Chair Martina Coker, Jacqueline Chatmon, Roberta Kellam, Dixon Leatherbury, Sylvia Stanley and Vice-Chair Mike Ward. Others present were Charles McSwain, Director of Development; Long Range Planner Peter Stith and Administrative Assistant Kay Downing.

The meeting was called to order at 7:25 p.m. by the Chair and a quorum established.

The agenda was revised to allow discussion of the draft zoning Code prior to Item 5. Motion to approve the revised agenda was made by Commissioner Kellam and seconded by Commissioner Stanley.

New Business

Since no public hearings are scheduled, the next regular meeting date was changed by consensus to November 6.

The Commission then made general comments concerning the draft zoning Code.

The Chair noted her concern about the timeframe to review the proposed draft Code. She also stated that performance zoning has fallen out of favor and is not used by any Virginia locality since litigation is more common with performance based zoning as noted at the latest planning conference. Even though performance zoning does allow more flexibility its administration can be difficult. She suggested that the Commission hire a land use attorney to review the draft Code and obtain more legal advice to protect the country from future legal issues that can be challenged.

When asked, Mr. McSwain informed the Commission that the County's legal team, Bruce Jones and Beverly Leatherbury, had been an integral part of the drafting process from beginning to end and had even drafted several sections to comply with State Code. However, Commissioner Kellam responded that even though Bruce Jones is an attorney he is not a land use attorney.

Commissioner Kellam noted that most communities do not like performance zoning because it is less predictable for adjacent property owners versus using a chart type of zoning that allows mitigation of impacts.

Commissioner Chatmon expressed her opinion that such statements are contradicting what has been proposed in the draft Code and that the Commission has no way of knowing if legal suits will be filed. She also asked if a cost analysis has been done to justify hiring a land use attorney.

Commissioner Kellam noted her concern that the Commission should know what potential pitfalls may occur since no other County is using this type of zoning in Virginia.

Commissioner Chatmon stated that such conjecture is still only an opinion and should be justified before hiring a land use attorney.

Commissioner Leatherbury noted that the draft Code lays boundaries in what can be done compared to the micromanagement of the current zoning ordinance and perhaps a Code that is a compromise between the two is needed. However, he stated that he wants to look at more information about performance standards.

When asked, Mr. McSwain stated again that the draft Code came from a directive of the Board to make the zoning process easier. Staff added performance standards to provide balance. He stated that people have been very frustrated by County bureaucracy and processes.

The Chair reiterated that the unpredictability and added flexibility of performance zoning needs to be reviewed by a land use attorney and recommendations be made to the Commission.

Commissioner Ward stated that the last time a land use attorney was hired it cost the County \$125,000 and the current ordinances resulted. He noted that he could not see much of a problem with the flexibility aspect. However, he did want to consider other aspects such as removing certain sections of the current ordinance to make them stand-alone Codes like the Bay regulations.

Commissioner Kellam suggested that the Board be approached about paying for a land use attorney's review and opinion. She also stated her opinion that the timeframe set forth to review and hold a public hearing is impossible since it does not allow enough time to sufficiently consider the document.

Commissioner Ward stated his opinion that local attorneys will comment on the draft Code and that so many special use permits are unwarranted as currently regulated.

Commissioner Kellam agreed that the current Code needs to be reviewed but the statutory Code allows the Commission to seek the assistance of a consultant. However, funds are needed to pay such a consultant or attorney. It was her opinion some of the draft Code would comply with the current comp plan but some areas would not.

Commissioner Stanley concurred that the timeframe may be impractical.

Commissioner Leatherbury noted that the rethinking process and review will occur again in six months after the comp plan is updated.

It was noted that Commissioner Ward has done a side-by-side comparison of the current zoning ordinance and the draft Code for the Commission's information. This comparison was furnished to each Commissioner by email and staff as well for information purposes. However, staff noted that this comparison does not include those sections of the 2000 ordinance that still apply.

Discussion was held on the proposal that Bay Act regulations would apply only to the west side of the County and no longer the entire east side. Commissioner Ward stated that the Bay Act specifically states that its regulations shall apply to the west side of the Eastern Shore. Mr. McSwain added that stormwater regulations should be adopted by April 2014 to help assuage any concerns. Commissioner Kellam stated her opinion that the entire County should remain under Bay regulations.

Commissioner Ward noted that some provisions may face a legal challenge and those decisions will hold up the process if there is a direct contradiction between the comp plan and the draft zoning Code. Commissioner Kellam concurred and added that the Commission should not recommend a draft Code that is going to be challenged.

Other points noted in the draft Code were the deletion of the Highway Corridor Overlay District and combining the Waterfront Villages into a single Village District. Mr. Stith noted that the Waterfront Village description is essentially identical to that of Village except for a few words.

At the conclusion of discussion, the Commission deferred any decision to seek a legal review from a land use attorney until a later time.

The Commission decided to continue its review of the comp plan at the Nov. 6 meeting and requested that the Zoning Administrator be present at the next work session on November 20 when the draft Code will be discussed.

Commissioner Kellam left the meeting at 8:33 p.m.

Comprehensive Plan Review

Part I, Section 3 Economic Plan was reviewed and the following edits made.

On Page 1, line 6, replace "higher" with "broader".

Page 3, lines 63 & 64 replace "Rt." with "Route" and "Rd." with "Road". (It was noted that such abbreviations should be replaced with their full meaning throughout all sections.)

Page 4, line 94, it was noted that the numbers had been transposed; line 106, add "Agricultural" before "Subcategories"; line 107, change "both" to "each"; and line 112, rewrite "due to global demand and improved yields" to "due to improved production methods and yields, mechanization and global demand."

Page 5, line 130, "County" should be capitalized.

Page 6, line 173, delete “very apt”.

Page 8, line 222, change the first “and” to “an”; line 225, the word “supports” should be singular.

Page 11, in Strategy 3.2.6, change “Ag” to “Agriculture”.

Page 12, in Strategy 3.4.8, change “Rt.” to “Route”.

During review, discussion was held on what defines “basic industry”. Mr. McSwain noted that he had taken a simplistic approach to identify basic industry and its direct influence on the economy. He explained that basic industry should not just trade local income from one source to another. Commissioner Ward suggested that more emphasis should be given to the health care industry and Commissioner Leatherbury concurred. Commissioner Ward added that if health care is needed then infrastructure is needed. Mr. McSwain agreed and noted that the medical facilities that will be left in Nassawadox do not wish to run a sewage treatment system.

While discussing Goals and Strategies, Mr. Stith noted that language used to describe each goal should remain more general instead of being measurable by details as was discussed at a previous meeting. The Commission concurred since measurements can change.

Commissioner Chatmon noted her opinion that the impact of the real estate market is not sufficiently addressed.

It was decided that Commissioner Ward would make final edits to expand basic industry information for the Commission’s consideration.

It was decided that Part I of the Transportation Section would be reviewed at the regular November meeting along with Part I, Environment, Natural Resources & Open Space Plan.

Recess

Upon motion by Commissioner Stanley and second by Commissioner Chatmon the meeting was recessed at 9:00 p.m. until Wednesday, November 6. The motion carried 5 to 0.

Chair

Secretary